IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 227 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

VIMAL TRADING CO

Appearance:
MR BB NAIK with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of Assessment Years 1983-84 and 1984-85 :-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee is entitled to registration particularly when one of the partners, namely, Shri P.T. Munshaw was a partner in the assessee firm in three different capacities, namely, (i) as Karta of P.T. Munshaw HUF, (ii) as Karta of T.C. Munshaw HUF and (iii) as the trustee of T.C. Munshaw Family Trust ?"

2. At the hearing of the reference, Mr BB Naik, learned counsel for the revenue has invited our attention to the decision of the Apex Court in CIT vs. Kandath Motors, (1997) 224 ITR 663 wherein the Apex Court has held that a person can be a partner in a partnership firm in his individual capacity and again in another capacity. In the facts of that case, the concerned assessee was a partner in his individual capacity and also as representing the three heirs of a deceased partner. The said assessee had signed partnership agreement in his individual capacity as well as representing heirs of the deceased. The Apex Court has held that there was nothing in the Indian Partnership Act, 1932 or the Indian Contract Act, 1872 which prevented the agreement of this nature and that the validity of the partnership could not be doubted when there were other partners as well. The Apex Court has also held that if the legal representative of the deceased is also one of the surviving partners, he can agree to join the new partnership as a nominee of the legal heirs of the deceased partner.

3. In the facts of the present case, Shri PT Munshaw was a partner in the assessee firm in three different capacities - (i) as Karta of P.T. Munshaw HUF, (ii) as Karta of T.C. Munshaw HUF and (iii) as the trustee of T.C. Munshaw Family Trust.

4. Following the aforesaid principles laid down by the Apex Court in case of Kandath Motors (Supra), we hold that the registration could not be refused to the partnership firm in question merely on the ground that Shri PT Munshaw was a partner in the assessee firm in the three capacities as mentioned above.

5. In view of the above decision, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-